

SENATE BILL NO. 1177

September 21, 2022, Introduced by Senators BRINKS, MCCANN, POLEHANKI, SANTANA, CHANG, GEISS, BULLOCK, MCMORROW, MOSS and HOLLIER and referred to the Committee on Judiciary and Public Safety.

A bill to establish and allow for gestational surrogacy agreements; to provide for a child conceived, gestated, and born according to a gestational surrogacy agreement; to prescribe the duties of certain state departments; to provide for penalties and remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act may be cited as the "gestational surrogacy
2 parentage act".

3 Sec. 3. As used in this act:

1 (a) "Assisted reproduction" means a method of causing
2 pregnancy through means other than by sexual intercourse.

3 (b) "Best interests of the child" means that term as defined
4 in section 3 of the child custody act of 1970, 1970 PA 91, MCL
5 722.23.

6 (c) "Child" means an individual born under a gestational
7 surrogacy agreement, whose parentage may be determined under this
8 act.

9 (d) "Compensation" means a payment of money, objects,
10 services, or anything else that has monetary value. Compensation
11 does not include payment of any of the following:

12 (i) Expenses incurred as a result of the pregnancy by a
13 gestational surrogate.

14 (ii) The gestational surrogate's actual medical, legal, and
15 other professional expenses and any incidental cost or fee.

16 (iii) Time lost from work by the gestational surrogate because
17 of the surrogate gestation or the gestational surrogacy agreement.

18 (iv) Reasonable and actual living expenses for the gestational
19 surrogate consistent with payments allowed for adoption under
20 section 54 of chapter X of the probate code of 1939, 1939 PA 288,
21 MCL 710.54.

22 (e) "Developmental disability" means that term as defined in
23 section 100a of the mental health code, 1974 PA 258, MCL 330.1100a.

24 (f) "Expense" includes, but is not limited to, medical, legal,
25 and other professional and incidental cost, fee, or lost time from
26 work related to the surrogate gestation or the gestational
27 surrogacy agreement.

28 (g) "Gamete provider" means an individual who provides sperm
29 or an egg for use in assisted reproduction.

1 (h) "Gestational surrogacy agreement" means a contract,
2 agreement, or arrangement in which both of the following apply:

3 (i) A gestational surrogate agrees, and, if married, the
4 gestational surrogate's legal spouse also agrees, to do both of the
5 following:

6 (A) Undertake the obligations imposed on the gestational
7 surrogate under the terms of the gestational surrogacy agreement.

8 (B) Voluntarily relinquish parental and custodial rights to
9 the child to the intended parent for the intended parent to assume
10 full legal and physical custody of the child.

11 (ii) The intended parent agrees to be the legal parent and
12 assumes full legal and physical custody and responsibility of the
13 child by operation of law.

14 (i) "Gestational surrogate" means an adult, not an intended
15 parent, who enters into a gestational surrogacy agreement to bear a
16 child and who is not a gamete provider for the child.

17 (j) "Intellectually disabled" means intellectual disability as
18 that term is defined in section 100b of the mental health code,
19 1974 PA 258, MCL 330.1100b.

20 (k) "Intended parent" means an individual who intends to
21 become the legal parent and assumes full legal and physical custody
22 by operation of law of the child that results from a gestational
23 surrogacy agreement.

24 (l) "Mental health professional" means that term as defined in
25 section 100b of the mental health code, 1974 PA 258, MCL 330.1100b.

26 (m) "Mental illness" means that term as defined in section 400
27 of the mental health code, 1974 PA 258, MCL 330.1400.

28 (n) "Physician" means an individual licensed under part 170 or
29 175 of the public health code, 1978 PA 368, MCL 333.17001 to

1 333.17097 and 333.17501 to 333.17556, to engage in the practice of
2 medicine or osteopathic medicine and surgery.

3 (o) "Surrogate gestation" means the transfer, by a physician,
4 into the gestational surrogate's uterus, of an embryo that was not
5 procreated from the individual's own egg.

6 (p) "Transfer" means a procedure for assisted reproduction by
7 which the embryo is placed into the body of the gestational
8 surrogate.

9 Sec. 5. (1) In order to enter into a gestational surrogacy
10 agreement, a gestational surrogate must meet all of the following
11 requirements:

12 (a) Be 21 years of age or older.

13 (b) Have previously given birth to at least 1 child.

14 (c) Have completed a medical evaluation by a physician.

15 (d) Have completed a mental health consultation by a mental
16 health professional.

17 (e) Have consulted with independent legal counsel about the
18 terms of the gestational surrogacy agreement.

19 (f) Have, or shall obtain, a health insurance policy or other
20 coverage for major medical treatment and hospitalization. The
21 health insurance policy or other coverage must extend throughout
22 the duration of the expected pregnancy and for 8 weeks after the
23 child's birth.

24 (2) In order to enter into a gestational surrogacy agreement,
25 an intended parent must meet both of the following requirements:

26 (a) Have completed a mental health consultation by a mental
27 health professional.

28 (b) Have consulted with independent legal counsel about the
29 terms of the gestational surrogacy agreement.

1 (3) A gestational surrogacy agreement that provides for
2 compensation to a party to the agreement is void and unenforceable
3 as contrary to public policy.

4 (4) An individual shall not enter into, induce, arrange,
5 procure, or otherwise assist in the formation of a gestational
6 surrogacy agreement for compensation.

7 Sec. 7. (1) In addition to the requirements under section 5
8 for a gestational surrogate and an intended parent, the gestational
9 surrogacy agreement must meet all of the following requirements:

10 (a) Be in writing and signed by all parties to the agreement.

11 (b) Specify that all evaluations, medical procedures, and
12 treatment must be conducted in accordance with the guidelines
13 published by the American Society for Reproductive Medicine or the
14 American Congress of Obstetricians and Gynecologists, or a
15 successor organization.

16 (c) Specify that a party to a gestational surrogacy agreement
17 may withdraw consent to an evaluation, medical procedure, or
18 treatment and may terminate the agreement no later than 24 hours
19 before an embryo transfer by giving written notice of the
20 termination to all parties to the agreement.

21 (d) Specify that a gestational surrogate does not have any
22 parental or custodial rights to the resulting child and that legal
23 and physical custody are automatically vested in the intended
24 parent by operation of the law.

25 (e) Specify that the intended parent has legal and physical
26 custody of and assumes responsibility for the resulting child
27 immediately upon birth.

28 (2) At least 1 of the parties to the gestational surrogacy
29 agreement must be a resident of this state.

1 (3) The gestational surrogacy agreement must expressly provide
2 that if the gestational surrogate is married, that spouse must
3 acknowledge and agree to abide by the obligations imposed on the
4 gestational surrogate by the terms of the agreement; that the
5 spouse of the gestational surrogate has no claim to parental rights
6 or legal or physical custody of a resulting child; and that the
7 spouse of the gestational surrogate must acknowledge the exclusive
8 parental rights of the intended parent of the resulting child.

9 (4) A marriage of the gestational surrogate subsequent to
10 executing the gestational surrogacy agreement does not affect the
11 validity of that agreement or the exclusive parental rights of the
12 intended parent.

13 Sec. 9. (1) If the attorneys representing both the gestational
14 surrogate and the intended parent certify that the parties entered
15 into a gestational surrogacy agreement that meets the requirements
16 of sections 5 and 7, that agreement is valid and enforceable under
17 this act.

18 (2) The certification required of the attorneys under
19 subsection (1) must be filed on forms prescribed by the department
20 of health and human services.

21 (3) A certification form required under this section is
22 sufficient documentation for the state registrar to issue a birth
23 certificate naming the intended parent as the parent of the
24 resulting child.

25 (4) If the provisions of sections 5 and 7 are met, an
26 individual may enter into, arrange, procure, or otherwise assist in
27 the formation of a gestational surrogacy agreement.

28 Sec. 11. If a gestational surrogacy agreement satisfies the
29 requirements of this act, all of the following apply:

1 (a) The gestational surrogate and the gestational surrogate's
2 spouse, if any, by operation of law, do not have any parental or
3 custodial rights to the resulting child.

4 (b) The intended parent, by operation of law, is the parent of
5 the resulting child. A resulting child is the child of the intended
6 parent. Parental rights and responsibilities vest exclusively in
7 the intended parent. The intended parent is entitled to receive a
8 birth certificate naming the intended parent as the parent of the
9 resulting child.

10 (c) An individual who is the parent of a resulting child under
11 this act is obligated to support the resulting child. Breach of a
12 gestational surrogacy agreement by the intended parent does not
13 relieve the intended parent of the obligation to support the
14 resulting child.

15 Sec. 13. (1) The family division of the circuit court has
16 jurisdiction over matters relating to the validity or
17 interpretation of a gestational surrogacy agreement if 1 or more of
18 the following apply:

19 (a) The child is anticipated to be born in this state.

20 (b) Either intended parent resides in this state.

21 (c) The gestational surrogate resides in this state or the
22 gestational surrogacy agreement is executed in this state.

23 (d) Any medical procedure to carry out the gestational
24 surrogacy agreement is or will be performed in this state.

25 (2) If an intended parent desires a court order declaring the
26 parentage of a child, either in addition to or instead of the
27 administrative process for obtaining a birth certificate under
28 section 9 or in addition to the provisions of section 11, the
29 intended parent may request the family division of the circuit

1 court for entry of that order or judgment. The complaint may be
2 filed before or after the child's birth, and the requested order or
3 judgment may be issued before or after the child's birth. The
4 complaint must be accompanied by the attorney certifications
5 described in section 9. On receipt of the complaint and
6 accompanying certifications, the court shall, without holding a
7 hearing unless the gestational surrogate challenges the accuracy or
8 authenticity of the attorney certificates, enter an order or
9 judgment that does all of the following:

10 (a) Declares that the intended parent is the child's legal
11 parent.

12 (b) Declares that the gestational surrogate and the
13 gestational surrogate's spouse, if any, are not the child's legal
14 parents.

15 (c) Declares that the intended parent has full legal and
16 physical custody of the child immediately on the child's birth, to
17 the exclusion of the gestational surrogate and the gestational
18 surrogate's spouse, if any.

19 (d) Declares that, if the birth of the child is expected to be
20 in this state, this state must issue a birth certificate stating
21 that the intended parent is the child's legal parent and not the
22 gestational surrogate or spouse, if any.

23 (e) Declares that the order is to be given full faith and
24 credit in all other states, commonwealths, and territories of the
25 United States to the full extent of the law.

26 (3) If there is a dispute over the terms of a gestational
27 surrogacy agreement or if there is noncompliance with a term of the
28 agreement, a party to the agreement may request the court to
29 construe the terms of the agreement or to compel the noncompliant

1 party to comply with the terms of the agreement. A court shall not
2 order specific performance of a gestational surrogacy agreement by
3 requiring a gestational surrogate to be impregnated.

4 Sec. 15. (1) An individual shall not enter into, induce,
5 arrange, procure, or otherwise assist in forming a gestational
6 surrogacy agreement under which a minor or an individual diagnosed
7 as being intellectually disabled or as having a mental illness or
8 developmental disability is the gestational surrogate.

9 (2) An individual other than a minor or an individual
10 diagnosed as being intellectually disabled or as having a mental
11 illness or developmental disability who enters into, induces,
12 arranges, procures, or otherwise assists in forming an agreement
13 described in subsection (1) is guilty of a felony punishable by a
14 fine of not more than \$50,000.00 or imprisonment for not more than
15 5 years, or both.

16 Sec. 17. (1) An arrangement that does not comply with this act
17 is not prohibited by this act unless it violates section 15.
18 Questions about the parentage and legal and physical custody of an
19 individual that result from a surrogacy arrangement that does not
20 comply with the requirements of this act must be determined in
21 accordance with other law of this state.

22 (2) This act applies only to a gestational surrogacy agreement
23 entered into after the effective date of this act.

24 Sec. 19. If a child is born to a gestational surrogate without
25 a gestational surrogacy agreement and there is a dispute between
26 the parties concerning custody of the child, the party who has
27 physical custody of the child may retain physical custody of the
28 child until the circuit court orders otherwise. The circuit court
29 must award legal and physical custody of the child based on a

1 determination of the best interests of the child, taking into
2 consideration the intent of the parties. Intended parents have
3 standing in an action to determine custody of the child.

4 Enacting section 1. The surrogate parenting act, 1988 PA 199,
5 MCL 722.851 to 722.863, is repealed.

6 Enacting section 2. This act takes effect 90 days after the
7 date it is enacted into law.

8 Enacting section 3. This act does not take effect unless all
9 of the following bills of the 101st Legislature are enacted into
10 law:

11 (a) Senate Bill No. 1178.

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13 (b) Senate Bill No. 1179.

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15 (c) Senate Bill No. 1180.

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